

2.8.5.2 SEARCHES NOT SUBJECT TO FOURTH AMENDMENT PROTECTION

Not every examination of a person or their property is considered a search. The examination of an item or area in which a person has no reasonable expectation of privacy is not a search regulated by the Fourth Amendment. Examples include:

- 1) **Abandoned Property:** A person who abandons property has surrendered any privacy interest the person may have had in the property. Such property is subject to search by a law enforcement officer without a warrant.
- 2) **Garbage:** When a person places garbage by the curb there is no longer any reasonable expectation of privacy in that garbage. Therefore, no Fourth Amendment protection is implicated by a search of that garbage.
- 3) **Open Fields:** Defined by the Supreme Court as any unoccupied or undeveloped area outside of the curtilage of a home. The area considered as an open field does not carry a reasonable expectation of privacy, and is therefore not governed by the Fourth Amendment.
- 4) **Personal Characteristics:** A person has no reasonable expectation of privacy in those items that are in the plain view of others. Examples include a person's voice, handwriting or photograph. Personal characteristics that are not subject to public examination (blood content, scrapings under a person's fingernails, etc.) are items in which a person has a reasonable expectation of privacy.
- 5) **Plain View:** There is no expectation of privacy in an object in plain view and so no search is performed. When a police officer sees an object in "plain view" and its value as evidence or contraband is apparent, the officer may seize it, as long as the officer can do so without moving or reaching into an area in which the officer has no right to be, and does not move or manipulate the item first. [CALEA 5: 1.2.4 g].
- 6) **Search by Non-Governmental Persons:** The Fourth Amendment does not provide protection against actions of private persons. Property seized by private persons, in a manner that would otherwise be illegal if seized by a government agent does not violate the Constitution and may be provided to an officer for use in a criminal investigation. However, an officer may not use a private person as an "agent" to search if the officer would not otherwise be authorized to conduct the search.
- 7) **Sniff- Dog or Human:** Generally, sniffing the air around a person or property that is in a public place or a place open to the public is not considered a search, as there is no reasonable expectation of privacy in the air. The Arizona Court of Appeals has held that reasonable suspicion is required to permit a canine sniff at a person's front door, window, or garage.
- 8) **Visual Aids or Heat Sensing Equipment:** The use of flashlights, photo surveillance, or heat sensing equipment to view or measure property that is otherwise open to public view is not

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considered a search, as it simply enhances the officer's senses. Some advanced technology using heat sensing has been held in the United States Supreme Court to require a warrant if it reveals the intimate details of persons living within. [CALEA 5: 1.2.4g].

2.8.5.1.13 Motor Vehicle Exception [CALEA 5: 1.2.4C]

- 1) In order to search a vehicle without a warrant, an officer must have **probable cause** to believe there is contraband or evidence in the vehicle, and the vehicle must be **readily mobile**. Some examples of "vehicle exception" to the warrant requirement that may lead to probable cause include, but are not limited to:
 - a. A canine alerts on the vehicle;
 - b. An officer smells the odor of fresh or presently burning marijuana coming from the vehicle;
 - c. An officer sees contraband, narcotics, or paraphernalia in plain view in the vehicle;
 - d. The arrestee makes statements about evidence or contraband in the vehicle.
- 2) The scope of a vehicle search is the same as would be authorized by a search warrant. The search shall be limited by the object of the search, and may include the passenger compartment, trunk and all containers (locked or unlocked), belonging to driver or passenger(s) within the vehicle.